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UNCLAS SECTION 01 OF 05 JAKARTA 001388

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SUBJECT: USTR FINDS IPR PROGRESS, CHALLENGES IN INDONESIA

REF: A) Jakarta 1212 - New Investment Law;

B) Jakarta 1326 - East Java-China Trade

11. (SBU) Summary. Visiting USTR officials Barbara Weisel and David Katz reviewed efforts related to intellectual property rights (IPR) protection and enforcement in Indonesia during their May 3-4 visit to Jakarta. Members of the National IPR Task Force noted that difficult and ongoing challenges remained to improve policy coordination by the Task Force, and U.S. business leaders reported that prosecutions and convictions of IPR pirates remains low, and dialog with private industry, especially on pharmaceuticals is weak. The Chairman of the Investment Coordinating Board (BKPM) Muhammed Lutfi, in response to concerns that foreign investors will need a letter of recommendation from BKPM to obtain a work visa (and thus a "backdoor" approval) under the new investment law, said that the BKPM will set up an immigration office in its headquarters to facilitate. A garment industry buyer said competition and transshipments from China are hurting Indonesia's textiles and garments sector, while a mining industry representative said that mining is "flat on its back" in Indonesia, despite high prospectivity, due to the unfriendly business climate. In meetings with ASEAN, Katz emphasized cooperation between the U.S. Food and Drug Administration and ASEAN on pharmaceuticals issues. USTR is also encouraging ASEAN members to attend a Sanitary and Phytosanitary workshop in Vietnam in July to learn more about irradiation of tropical fruits to improve access to the U.S. market. End Summary.

IPR: Progress and Challenges  
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12. (SBU) During a May 3-4 visit to Jakarta, visiting Assistant U.S. Trade Representative (AUSTR) Barbara Weisel and USTR Director for Southeast Asia and Pacific Affairs David Katz met with the American business community, the National IPR Task Force, IPR advisors, ASEAN officials, a member of Parliament's Commission VI, and a prominent member of the Indonesian Chamber of Commerce. At a May 3 AmCham lunch, business representatives gave an update on several issues, with emphasis on the continuing challenges of intellectual property rights (IPR) enforcement in Indonesia. The head of the AmCham IPR Committee noted several problems in the IPR area:

-- The National IPR Task Force still does not have a reliable budget. It also does not have a forum for dialog and consultation with the private sector.

-- Customs Law 10/95 was finally amended in November 2006 and allows for Customs to take action without having to get court permission in advance. It still requires implementing regulations, however. (Note: Embassy learned from Customs Human Resources Department Head and former IPR Division Head Okto Irianto, that Minister Mulyani will review the draft regulations for further inter-ministry discussion.)

-- Legal reform overall still lacks transparency, enforcement and decisions need to be made public. Judges need more training in IPR. More deterrence is needed for IPR piracy.

#### National IPR Task Force: Still New

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13. (SBU) In a meeting with the National IPR Task Force (TF) on May 4, USTR Weisel congratulated Indonesia on remaining on the Watch List, and noted that the formation of the IPR TF was big news. Ansori Sunungan, the Director for Copyrights and Industrial Design, said that the IPR TF has the goal of coordinating among relevant agencies, show the seriousness of the GOI, and perform public outreach and education to support IPR development in Indonesia. Cooperation among law enforcement agencies remains a huge problem. There is a view here that "piracy creates jobs," Ansori admitted. "The high U.S. price for genuine DVDs is also challenging for the market here," he argued. For Global IP Day on April 26, Indonesia held a series of seminars and events, including an "integrity awards" ceremony at which Vice President Kalla was the keynote speaker. Kalla praised creativity and innovation in his speech, and spoke of the importance of legal protections.

14. (SBU) The National IPR TF plans to meet at least once a month, and report every six months directly to President Yudhoyono. The IPR TF has five priorities through 2009, to be carried out by

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special working groups:

- Law enforcement issues (Regulation 2004/29);
- Review and analyze applicable regulations;
- Outreach and public relations;
- Human resources and capacity building;
- International Cooperation.

15. (SBU) The IPR TF also plans to set up a Secretariat. AUSTR Barbara Weisel asked about the TF's budget. Ansori responded that the budget is authorized under Presidential Decree No 4/2006 Article 11 "All costs associated with IPR Task Force activities is levied on the Ministry of Justice and Human Rights budget." The IPR TF has submitted its budget request to the Ministry of Finance, but has not yet received its own dedicated funding. The IPR TF is also looking at other budget sources as well. There will be a Ministerial level meeting with the IPR TF at least once a year, and three Ministers are very actively engaged: Coordinating Minister for the Economy Boediono, Trade Minister Pangestu, and the Minister of Law and Human Rights. Ministry of Trade's Ambassador Halida Miljani urged U.S. assistance in improving data collection on IPR violations, better case management and training of judges in IPR matters. Halida said her goal is for all police, prosecutors and judges to have the same level of knowledge on IPR.

#### Food and Pharmaceuticals IPR Issues

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16. (SBU) Pharmaceuticals companies continue to face challenges and complain there is "no level playing field" as domestic companies do not have to comply with World Health Organization codes and standards, while foreign companies do. One AmCham member claimed there is a nasty pattern of regulatory discrimination against foreign investors. Other representatives expressed their concern that the GOI requirement that all branded pharmaceuticals include the generic name of the medicine on the label at 80% of the size of

the brand name, and in the same font and color as the brand name, could have a major impact. Expert panels on nutrition do not reflect the greater body of science. The views of the experts are often not shared, and industry is not permitted to respond or put forth a position. It is not clear how "experts" are selected for the panel: they seem intended to simply create an artificial trade barrier. One drug company representative said there is "no transparency" on pricing and labeling issues for pharmaceuticals. "Not only are the GOI's doors closed, they are locked," she noted.

#### Halal: Lack of Standards and Certifiers

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17. (SBU) There is no standard or guidance for halal certification and labeling in Indonesia, and a lack of certifiers, which affects both the food and drug sectors. The Ministries are not communicating well with each other. USTR Weisel noted that this is a global problem, with no agreement between religious groups and no international halal standard. Industry currently pays a nominal fee for certifiers, but may eventually have to pay a much higher fee per unit. ASEAN may need to discuss having at least a regional halal standard. Currently, there is no consistency across borders. Weisel noted the importance that the religious standards of halal are met, but suggested that it would be useful to explore ways to agree on a regional or international standard of halal to avoid creating another non-tariff trade barrier.

#### Optical Discs: More Enforcement Needed

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18. (SBU) One of the Embassy's IPR advisors noted that there are 29 registered Optical Disc (OD) factories in Indonesia with a potential capacity to produce at least 500 million ODs. Industry estimates the annual legal requirement domestically at only around 15 million ODs. Despite Customs efforts and a licensing requirement for imports of optical-grade polycarbonate, large quantities continue to be smuggled in each year to support illegal manufacture. When OD factories were registered and required to engrave Source Identification Codes (SID) on production line molds, however, many

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factories have resorted to obscuring the engraved SID codes using heat resistant resins and they continue to produce illegal ODs. Factory inspectors are having difficulties. They have been kept waiting outside for 30 minutes or more while factories "clean up." When they finally enter, machines are warm but managers deny they are active.

19. (SBU) The Ministry of Industry representative said the Ministry lacks sufficient law enforcement support. It has the power of inspection but not the power to enter the factories, which only the police can do. The head of the AmCham IPR committee noted that President Yudhoyono has received the National IPR Task Force report, but has not yet made any public comment on the report or a statement on the need for improved IPR enforcement. In a subsequent meeting on May 5, the Embassy's two IPR advisors and a regional investigator for the recording industry association (IFPI) said the lack of continuity and documentation of raids is an ongoing problem. There is no timeline on what raids will occur where, and no follow-up through prosecution by the courts. The actions taken thus far by the GOI have received - deservedly - a lot of recognition and credit. But we need to measure results by the actual reduction in the availability of pirated material.

110. (SBU) AUSTR Weisel noted with regret that Ratu Plaza, a center for pirated OD vendors, was back up and running after two weeks of closure, with a pirated copy of the just-released movie "Spiderman 3" available for \$0.45. The IPR advisors said that change to the high-profile malls must be done incrementally, to gradually change out pirates with vendors of genuine goods. Gambling, narcotics and OD piracy had been three major sources of funding for the police. Now only OD piracy remains. The IFPI investigator believes that OD pirates have invested \$400-500 million in pirated OD production in Indonesia.

## End-User Piracy and Microsoft MOU

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¶11. (SBU) Microsoft representatives lamented that Indonesia has the third worst software piracy in the world after Zimbabwe and Vietnam. The Memorandum of Understanding signed in November 2006 had as a goal for the Government of Indonesia (GOI) to take steps to replace the estimated 87% pirated software on GOI computers by March 31, ¶2007. MS offered an 80% discount to put legitimate software on all GOI computers, estimate at 510,000 units. Total cost would be approximately \$45 million, a savings to the GOI of \$260 million.

¶12. (SBU) However, the Ministry of Information and Communications Technology did not put in a request for funds for the MOU in the 2007 budget, and in March 2007, the Business Competition Supervisory Commission (KPPU) urged the GOI to annul the deal in an advisory, stating it violated the 1999 Monopolies Law. Although not as strong as a formal KPPU ruling, the advisory has shaken the GOI. The KPPU said that many computers in the GOI were using open-source software, and that the MOU would "hand Microsoft a monopoly." The KPPU said the GOI and MS could face sanctions if it pursued the MOU.

¶13. (SBU) Former MICT Minister Sofyan Djalil has subsequently said MICT would have to review the estimate of 510,000 computers and asked if the National Bureau of Statistics (BPS) could do it. Microsoft has countered that if the estimate of 510,000 computers was too high, it would adjust its price accordingly at the discounted rate. (Comment: The stalled MOU reflects a lack of ownership in the GOI for solving pirated software use in the government. It is unclear which Ministry has the lead. The GOI does not currently appear to have any alternative strategy to the MOU.)

## Textiles and Garments: China Challenge

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¶14. (SBU) A representative of the garment industry noted that there is not one brand or manufacturer here that does not understand the challenge of China. Indonesia has a window of opportunity to be number two, but has to deal with the transshipment problem first (reftel B). The industry representative reported that growth in Indonesia-based production of just one international brand was 40% last year.

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## Mining: "Flat on Its Back"

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¶15. (SBU) A representative of a major mining company noted that the mining industry is "flat on its back" in Indonesia. The Director General for Mines recently stated at an international conference that foreign investors may need to partner with a state-owned company that will have 51% ownership. The GOI is considering requiring mining firms to process their ore domestically. Under current law, they have the option to export ore or process it domestically. In some cases, illegal miners outnumber legal ones. Indonesia is in the top ten for geologic prospectivity but near the bottom as an attractive place to invest, according to a widely respected industry survey. Data from Chile that poverty has been alleviated by 40% in areas surrounding mines falls on deaf ears here. Significant elements of the legislative and executive branches of the GOI seem to prefer to deal with Chinese, Korean and politically well-connected domestic investors such as Bakrie. They are not interested in U.S. investment right now. Mining and other extractive industries are very concerned about Article 33 of the new investment law, which criminalizes tax disputes (reftel). This article was not in the GOI's original draft, but inserted by Parliament.

## Investment Issues: Negative List Pending

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¶16. (SBU) In a meeting with the Chairman of the Investment

Coordinating Board (BKPM) Muhammad Lutfi, Lutfi said the new investment law is not necessarily better than what we had in 1967. Much of Indonesia's current problems with the business climate are not related to laws or regulations, but implementation at the local level. "The problem is at the bottom of the pyramid," Lutfi noted. "We can't control the harassing behavior of the Echelon IV and V officials." Lutfi said that the new negative list would be very progressive, but would not give a timeline for its completion. He criticized Trade Minister Pangestu for asking line ministries for a wish list for the negative list, stating this would only open it up for expansion. (Note: There is no love lost between Lutfi and Trade Minister Pangestu.) On the controversy surrounding the need for a letter of recommendation for foreign investors to receive employment visas (reftel A), Lutfi said that there will be an immigration office in the BKPM itself. Only foreigners who "misbehave" will have any difficulty. Regarding one-stop shops, eventually they will be in every province that needs one.

¶17. (SBU) In a meeting with Parliamentary Commission VI (Trade, Industry, Cooperatives and State-Owned Enterprises) Chairman Didik J. Rachbini, he noted that the new investment law will bring three levels of openness: completely open, open with conditions, and closed. The composition of the negative list is now in the hands of the GOI. Some national groups have criticized the new investment law is too liberal. The issue of natural resources is still under discussion for implementing regulations. If a sector is located in one province only, it will be the decision of the provincial government. If an investment crosses two or more sectors, the central government will be responsible. However, all FDI will be managed by the central government. The BKPM will eventually open provincial offices.

¶18. (SBU) The DPR looked at the investment laws of several other countries while crafting the law. Rachbini opined that the labor law amendments were very sensitive, and he was not optimistic about any near-term progress, though he said there could be some progress on labor in Special Economic Zones (SEZs) He said that nine or ten provinces are competing for SEZs. USTR Weisel asked about local awareness of these investment issues. Rachbini said there is not much awareness about the investment debates in the capital. When he travels home, he noted, "There are three things people worry about, the price of rice, the price of corn and the price of sugar."

#### ASEAN Issues: Pharmaceuticals and SPS

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¶19. (SBU) In meetings with ASEAN officials, USTR David Katz focused on the next steps to follow up the initial contact between U.S. Food and Drug Administration (FDA) and ASEAN on pharmaceuticals issues. The FDA suggested working through the Global Cooperation Group (GCG) of the International Conference on Harmonization (ICH). FDA experts will participate in a GCG meeting in Japan in the fall and could

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potentially meet with ASEAN afterwards. Katz noted that it is rare for the FDA to engage with international experts outside the ICH framework, so ASEAN should take advantage of this opportunity. Ms. Giang Le Chau, the ASEAN Secretariat's Senior Officer of Standards and Conformance, appreciated the need to follow up but cautioned about some ASEAN sensitivity with the ICH, which is supported by multinational corporations. She says that even if the initial pretext for the FDA to come to the region is the ICH, discussions with ASEAN should be portrayed as "government-to-government, regulator-to-regulator" talks. She thought it would be useful to develop a list of project for which ASEAN needs technical assistance and provide that to the FDA.

¶20. (SBU) Katz was not certain that such a list of assistance needs would be a useful way to proceed, thinking that policy discussion with the FDA, at least initially, would be useful to lay the groundwork for more technical talks. Katz suggested that if the FDA and ASEAN were to engage in further discussions, this might improve the prospects for further collaboration in the future. The initial key is to get the FDA out to ASEAN. The ASEAN delegation had a successful visit to the FDA Center for Drug Analysis and Research (CDER) Forum in Washington in April. USTR and the ASEAN



Secretariat, along with members of the ASEAN Consultative Committee

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for Standards and Quality (ACCSQ) Pharmaceutical Products Working Group (PPWG), will need to develop next steps for work under the TIFA on the ASEAN Common Technical Dossier for pharmaceuticals registration and approvals procedures. Katz also made a pitch for multinational corporations to be included in the dialogue sessions with the ASEAN Working Group on Pharmaceutical Products. Giang noted there have been problems in the past resulting in restrictions that only permitted ASEAN nationals to attend. However, she thought the Chairman of the group was showing signs of softening on this tough position.

¶21. (SBU) On Sanitary and Phytosanitary (SPS) issues, APHIS is proceeding with the workshop in Ho Chi Minh City, Vietnam in July on the irradiation of fruits and has sent invitations to all ASEAN Member Countries except one. Mr. Somsak Pippopinyo, Head of Natural Resources Unit, said that the ASEAN Secretariat was willing to be helpful to inform member countries of the event, but was not certain of its role. They expressed a willingness to inform the ASEAN Experts on SPS Issues of the seminar, when it meets June 18-19 in Kuala Lumpur, and asked whether APHIS would like to make a presentation at the workshop. Katz said APHIS liked the idea of working at the regional level to be efficient at explaining the requirements for access to the US market for fresh fruits. However, he doubted if APHIS had a budget to support an extra trip. He promised the Secretariat to provide the list of acceptances for the seminar.

¶22. (U) USTR contributed to and cleared on this message.

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